
**ELIGIBILITY AND ASSISTANCE STANDARDS
PASS-ON OF FEDERAL PENALTIES**

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DIVISION 91

Chapter

Pass-on of Federal Penalties 91-100

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CHAPTER 91-100 PASS-ON OF FEDERAL PENALTIES**91-101 DEFINITIONS****91-101**

The following definitions are for the purposes of Chapter 91-100 only.

- .1 “All family” means all Temporary Assistance for Needy Families (TANF) cases with at least one work-eligible individual in the home.
- .2 “MOE” means maintenance-of-effort and is the statewide expenditure of state and local funds that must be made in order for the state to receive its TANF block grant funding.
- .3 “Caseload Reduction Credit” means a reduction in the minimum federal work participation rate standard if the state’s average monthly TANF assistance caseload decreased the previous federal fiscal year in comparison to its average monthly TANF caseload in the base year. This definition includes the surplus MOE caseload reduction credit found in 45 Code of Federal Regulations (CFR) Section 261.43.
- .4 “County MOE” means county maintenance-of-effort and is the required amount that each county shall expend in their CalWORKs and Food Stamps programs from their own funds, either from the county’s general fund or from the social services account of the county health and welfare trust fund to support the administration of programs providing support to needy families.
- .5 "County Work Participation Rates (Co WPRs)" means a calculation (based on federal TANF rules) to determine the rate of TANF families that are meeting federal work participation requirements. There are two rates calculated for each county: one is for two-parent families and the other is for all families, which is an overall work participation rate.
- .6 “Department” or “CDSS” means the California Department of Social Services.
- .7 “Two-parent family” means a TANF family with two work-eligible natural or adoptive parents (of the same minor child) living in the home, unless both are minors and neither is a head-of-household.
- .8 “Work-eligible individual” means the same as defined in 45 CFR Section 261.2 (n).

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- .81 The TANF rule issued by the Department of Health and Human Services at 73 Federal Register 6772-6828 (February 5, 2008) clarified the definition of a work-eligible individual as an adult (or minor child head-of-household) receiving assistance under TANF or a separate state program or a non-recipient parent living with a child receiving such assistance unless the parent is:

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- .811 A non-citizen who is ineligible to receive assistance due to his or her immigration status,
- .812 A minor parent and not the head-of-household,
- .813 At state option on a case-by-case basis, a recipient of Supplemental Security Income (SSI) benefits, Social Security Disability Insurance (SSDI) or Aid to the Aged, Blind and Disabled in the Territories,
- .814 A parent providing care for a disabled family member living in the home, provided that the need for such care is supported by medical documentation, or
- .815 An individual in a family receiving MOE-funded assistance under an approved Tribal TANF program, unless the state includes the Tribal family in calculating work participation rates.

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- .9 “Work Participation Rate” (WPR) means, per federal definition, the adjusted work participation rate after the caseload reduction credit is considered.

Authority cited: Sections 10544, 10553, and 10554, Welfare and Institutions Code. Reference: Sections 10540.5, 10544, 11521, 15200, 15204.2, 15204.25, and 15204.4 Welfare and Institutions Code; 45 Code of Federal Regulations (CFR) Sections 260.30 through 260.33, 261.2, 261.40, 261.41, 261.42, 261.43, 261.44, 262.2, and 263.1.

91-110	CWD REPORTING RESPONSIBILITIES	91-110
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- .1 Each county welfare department (CWD) shall review, report, and submit to CDSS accurate, timely, and complete data, as required by CDSS, to comply with federal and state disaggregated data, which consist of individual and case-level, reporting requirements and to determine the CWD’s degree of compliance with federal TANF and state performance requirements. The data and performance areas to be reviewed and reported shall include, but are not limited to, the following:
- .11 Family characteristics,
 - .12 Funding source,

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- .13 Time on aid,
- .14 Incomes available to the family,
- .15 Actual hours of participation in work activities, and
- .16 Employment data.
- .2 Each CWD shall:
 - .21 Use the sample of county-specific and/or state cases referred by CDSS within the time frames determined by CDSS,
 - .22 Conduct data reporting activities as required by CDSS to provide statistically valid data for county-specific and/or state outcome measurement and other purposes as required by federal or state law, and
 - .23 Ensure the timeliness, accuracy, and completeness of the county-specific and state data submitted for transmission and analysis.
- .3 Each CWD shall provide data from county-specific and/or state cases each month consistent with federal and state requirements.
 - .31 A random sample of county-specific and/or state cases shall be reviewed monthly.
 - .32 CWD sample reviews shall comply with standards as prescribed by current federal and state regulations.
 - .33 All case reviews shall be completed and transmitted by CWD staff to CDSS as required by CDSS and/or the United States Department of Health and Human Services (DHHS).
- .4 CWDs shall perform data collection activities as part of the CWD sample case review required by this section.
- .5 Substantial noncompliance by a CWD in meeting the requirements of this section, as documented by CDSS, shall subject that CWD to the provisions of Welfare and Institutions Code Section 10544. Examples of substantial noncompliance include the following:
 - .51 Chronically missing state and federal deadlines;

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- .52 Chronically not meeting federal and state accuracy regulations;
- .53 Willfully misrepresenting data;
- .54 Failure to submit accurate, complete, and timely data, without good cause; and/or
- .55 Failure to submit complete data for each sample case for every month in a federal fiscal year.
- .6 CDSS shall select and review a sample of cases to validate the data reported by the CWD on the federal and/or county-specific sub-samples and/or state sub-samples and inform the county of the results of the review. CDSS may change review findings based on a difference in findings between CWD review and CDSS review of CWD cases.
 - .61 A CWD shall have ten (10) working days from the CWD's date of receipt of a notice from CDSS of a difference in finding to dispute each difference in finding identified by CDSS.
 - .62 The burden of proof rests with the CWD to provide documentation and verification of why the CWD's finding differs with CDSS' finding.
 - .63 CDSS will evaluate and review the documentation. If the finding is unfavorable to the CWD, CDSS will use the CDSS findings/revisions, after a difference in findings, to determine if a CWD failed to meet the federal requirement and to determine penalty pass-ons.

Authority cited: Sections 10541.7, 10544, 10553, 10554, 10809, 10852, and 10853, Welfare and Institutions Code. Reference: Section 10540.5, 10541.7, 10544, and 11521.5, Welfare and Institutions Code; 45 CFR 261.2, 262.3, and 265.3.

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- .1 When the state is notified that it is subject to a federal penalty, CDSS will exhaust all reasonable and available federal administrative remedies to avoid or minimize the amount of the penalty. CDSS shall require all CWDs that did not meet the federal requirement and request all other counties to provide sufficient and relevant information and documentation that may establish the basis for the state's appeal to the federal government. CWDs shall have at least 30 days from the date of notice from CDSS to provide this information. Examples of specific CWD circumstances that may be included as part of the state's appeal for having good cause for its failure to meet the work participation rate or to achieve TANF outcomes required by federal law include the following:

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- .11 Natural disasters and other calamities (e.g. hurricanes, earthquakes, fire) whose disruptive impact was so significant as to cause the CWD's failure;
- .12 Isolated problems of minimal impact that are not indicative of a systemic problem;
- .13 Formally issued federal guidance that provided incorrect information resulting in the CWD's failure;
- .14 Failure to meet WPRs is attributable to the CWD's provision of federally and state recognized good cause domestic violence waivers [i.e., it provides evidence that it achieved the applicable work rates when individuals receiving federally recognized good cause domestic violence waivers of work requirements, in accordance with the provisions at 45 Code of Federal Regulations Sections 260.54 (b) and 260.55, are removed from the calculations in Sections 261.22 (b) and 261.24 (b)]; and
- .15 Failure to meet the work participation rates is attributable to the state's provision of assistance to refugees in federally approved alternative projects, in accordance with 45 Code of Federal Regulations Section 261.52(b)(2).

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.2 PENALTY PASS-ON STEPS

- Step 1: CDSS receives WPR failure notice from DHHS.
- Step 2: CDSS notifies all counties that the state failed to meet the federal WPR and that a pass-on may be imposed (Section 91-130.21). This first notification shall require all counties that did not meet the WPR and ask all other counties to provide sufficient and relevant information and documentation that may establish the basis for the state's appeal of the penalty. CWD's have 30 days from the date of the notice from CDSS to provide this information (Section 91-120.1).
- Step 3: If state appeal is unsuccessful, CDSS shall notify (2nd notification) in writing each county that contributed to the state's failure to meet the federal WPR requirement that a penalty pass-on may be imposed. The CWD is invited to present its arguments to appeal the penalty pass-on. Each CWD shall have 60 days from the date of CDSS' notification to provide the appeal information (Section 91-140.3). Concurrently, CDSS pursues administrative remedies with the federal government. No pass-on of penalty costs shall be applied during the CWD's appeal filing and determination period, until all state appeals and remedies have been exhausted, and DHHS determines the final federal fiscal penalty amount. (Section 91- 130.7).

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- Step 4: Notification (3rd notification) of the counties of the final federal penalty amount, the amount of penalty for each county not meeting the required WPR, and/or the outcome of the county's appeal.
- Step 5: Reduction in the county's single allocation costs, which will occur in the state fiscal year immediately following CDSS final determination of the county's penalty pass-on amount. If a CWD is granted relief or waiver from its share of the penalty, that portion of the total penalty shall not be imposed on the other CWDs that failed to meet the WPR. (Section 91-140.42).

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Authority cited: Sections 10544, 10553, and 10554, Welfare and Institutions Code. Reference: Sections 10540.5, and 10544, Welfare and Institutions Code; 45 CFR 261.2, 261.52, 262.1, 262.3, 262.4, and 262.5.

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- .1 When DHHS imposes a TANF fiscal penalty on the state for failing to achieve TANF outcomes required by federal law, the penalty is subject to pass-on as provided in this section after exhaustion by CDSS of all reasonable and available federal administrative remedies. Federal penalties that are subject to pass-on include, but are not limited to, the following:
- .11 Failure of the CWDs to meet the WPR required for the state under federal law.
- .2 When the state incurs a federal penalty for failure to meet the federal WPR, the CWDs' share of any federal penalty is 50 percent. The total amount of the CWDs' 50 percent share is subject to pass-on as provided in this section to those CWDs that failed to meet the federal requirements, less any amount reduced per Section 91-140.
- .21 CDSS shall notify all the counties in writing that the state failed to meet the federal requirement and that a pass-on of penalty costs will be imposed.
- .22 If the state fails only the all family (overall) participation rate or both the all family and two-parent rates, a CWD's penalty will be the penalty associated with not meeting the all family rate.

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- .23 If the state fails only the two-parent participation rate, a CWD's penalty will be the penalty associated with not meeting the two-parent rate.
- .3 CDSS shall determine that a CWD has failed to meet applicable federal requirements when a CWD fails, without good cause, to submit accurate, timely, and complete data used to measure work participation, as required by CDSS.
- .31 Good causes shall include, but not be limited to, the lack of accurate, timely, and complete instructions from CDSS.
- .32 CDSS shall use all available data, including data reported pursuant to Section 91-110, to determine whether a CWD has failed to meet federal and state requirements.
- .33 CDSS shall determine the CWD annual WPR using CWD data collected in a manner consistent with federal TANF data reporting requirements. The WPR calculations shall be based on data from a monthly sample of CWD cases as specified in Section 91-110.
- .331 A CWD's monthly all family (overall) WPR is equal to the number of TANF cases that include a work-eligible individual who meets the federal participation requirements, divided by, the number of TANF cases that include a work-eligible individual, minus the number of such families that are in sanction in that month for no more than three of the preceding 12 months and minus the number of families with a single custodial parent who is caring for a child under age one and who does not meet TANF work participation requirements. The overall TANF all family work participation rate for a federal fiscal year (FFY) is the average of the CWD's overall TANF WPRs for each month in the FFY. The overall TANF work participation rate for each county will be the required federal rate, less the state's caseload reduction credit pursuant to federal regulations.
- .332 The two-parent family WPR shall apply to two-parent families with two work-eligible individuals. When one of the parents is a work-eligible individual with a disability, the family shall not be considered a two-parent family and shall not be included in either the numerator or denominator of the two-parent WPR.
- .333 A CWD's monthly two-parent family WPR is equal to the number of two-parent TANF family cases in which both parents are work-eligible individuals and together they meet the participation requirements, divided by, the number of two-parent family cases in which both parents are work-eligible individuals during the month, minus, the number of such two-parent families that are in sanction in that month and for no more than three of the preceding 12 months. The TANF two-parent family WPR for a FFY is the average of the CWD's two-parent TANF work participation rates for each month in the FFY. The two-parent TANF work participation rate for each county will be the required federal rate, less the state's caseload reduction credit pursuant to federal regulations.

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.334 A CWD that fails, without good cause, to send accurate, timely and complete data, as required by Sections 91-110.3 and 91-130.3 for any month in a given FFY, will have its work participation rate calculated for each month the data is missing by dividing the numerator of zero by the number of TANF cases during the month as determined by CDSS.

.4 When the state does not achieve the outcomes required by federal law and, after exhaustion of all reasonable and available federal administrative remedies, is subject to a fiscal penalty, the dollar amount of the federal penalty that shall be passed on to a CWD shall be determined as follows:

- .41 Determine the state and a CWD's share of the penalty by multiplying the dollar amount of the state's federal fiscal penalty by 50 percent,
- .42 Determine the number of cases a CWD needed to meet the minimum WPR required by subtracting the average monthly caseload of the CWD that met the federally required WPR from the average monthly caseload required to meet the federal WPR,
- .43 Determine a CWD's penalty percentage dividing the number of cases needed to meet the minimum WPR of each failing CWD by the total number of the cases needed to meet the minimum WPR for all of the failing counties,
- .44 Determine a CWD's penalty pass-on amount by multiplying the dollar amount from the CWDs' 50 percent share of the federal fiscal penalty by the percentage from a CWD's penalty percentage.

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(A) Determining the state and CWD's share of penalty:

Assume a federal penalty in the amount of \$186,650,000. The state share would be \$93,325,000, and the CWDs' share would be \$93,325,000.

State 50 percent share	\$93,325,000 (\$186,650,000 x 50%)
CWDs' 50 percent share	\$93,325,000 (\$186,650,000 x 50%)

(B) Determining the number of cases a CWD needed to meet the minimum WPR required:

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Assume that four CWDs failed to meet the federal WPR requirement.

	<u>County A</u>	<u>County B</u>	<u>County C</u>	<u>County D</u>	<u>Total</u>
Cases subject to WPR	2,750	1,870	6,670	15,000	26,290
Cases required to meet WPR	1,375	935	3,335	7,500	13,145
Cases meeting WPR	1,250	370	1,670	5,000	8,290
Cases failing WPR	1,500	1,500	5,000	10,000	18,000
WPR	45.5%	19.8%	25.0%	33.3%	31.5%
(Required–Meeting)	(1375–1250)	(935-370)	(3,335-1,670)	(7,500 - 5,000)	
Number of cases needed to meet minimum WPR	125	565	1,665	2,500	4,855

Note: Required WPR is assumed to be 50 percent for purposes of this example. Actual required WPR may be lower than 50 percent based on the state’s federally-approved caseload reduction credit for that FFY.

(C) Determining a CWD’s penalty percentage:

	<u>County A</u>	<u>County B</u>	<u>County C</u>	<u>County D</u>	<u>Total</u>
Number of cases needed to meet minimum WPR, divided by the total needed to meet minimum WPR	125 4,855	565 4,855	1,665 4,855	2,500 4,855	4,855

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Percent of total cases needed to meet minimum WPR*	2.6%	11.6%	34.3%	51.5%	100.0%
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*NOTE: Percentages are rounded for example purposes only. Actual penalty pass-on determination will use actual numbers for calculation of penalty amount.

(D) Determining a CWD's penalty pass-on amount:

<u>CWDs that failed to meet requirement</u>	<u>CWDs' 50% share of federal penalty (Example A)</u>		<u>CWD's penalty percentage (Example D)</u>		<u>Dollar amount passed on to CWD</u>
1. County A	\$93,325,000	x	2.6%	=	\$ 2,426,450
2. County B	\$93,325,000	x	11.6%	=	\$ 10,825,700
3. County C	\$93,325,000	x	34.3%	=	\$ 32,010,475
4. County D	\$93,325,000	x	51.5%	=	\$ 48,062,375

Total Dollar Amount of Federal Penalty Passed on to CWDs \$ 93,325,000

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- .5 CDSS shall notify in writing each county that contributed to the state's failure to meet the federal requirement that a pass-on of penalty costs may be imposed. The CWD is allowed to present its arguments to appeal the penalty pass-on pursuant to Section 91-140.

- .6 CDSS shall pass on federal penalties by reducing the county's reimbursement of the single allocation expenditures by the dollar amount of the penalty pass-on determined under this section, subject to any reduction pursuant to Section 91-140.

- .7 The reduction in the county's single allocation costs shall occur in the state fiscal year (SFY) immediately following CDSS' final determination of the county's penalty pass-on amount. CDSS shall determine the penalty pass-on amount when: (1) all state appeals and remedies have been exhausted; (2) any county appeal under Section 91-140 is resolved; and (3) DHHS determines the final federal fiscal penalty amount.

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- .8 When a county's reimbursement of their single allocation expenditures is reduced by the state to offset the county's share of any federal penalty imposed, the county shall utilize county funds to replace the offset amount, so that total funding remains equal to the county's single allocation expenditures. These funds shall be in addition to the funds required to meet the county's MOE requirement.

Authority cited: Sections 10544, 10553, and 10554, Welfare and Institutions Code. Reference: Sections 10540.5, 10544, 11521.5, and 15204.4 Welfare and Institutions Code; 45 CFR 261.20, 261.22, 261.51, 262.1, and 262.3.

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- .1 A CWD may appeal the pass-on of penalty costs based upon good cause, pursuant to this section, and may have their penalty reduced or waived.
- .2 No pass-on of penalty costs shall be applied during the CWD's appeal filing period, pursuant to this section, or until CDSS has made a decision on the CWD's appeal.
- .3 Each CWD shall have 60 days from the date of CDSS' notification to provide the appeal information, pursuant to this section.
- .4 CDSS shall determine which CWD-raised issues meet the criteria for potential penalty relief pursuant to this section and may be considered in reducing or eliminating potential CWD liability for the penalty pass-on.
- .41 A CWD may be provided relief, in whole or in part, from a penalty if CDSS determines that there were circumstances beyond the control of the county, including but not limited to the following:
- .411 Natural disasters and other calamities (e.g., hurricanes, earthquakes, fire) whose disruptive impact was so significant as to cause the CWD's failure for which the burden of proof rests with the CWD;
- .412 Combination of work-required exempt, safety net, work-required sanction and good cause population exceed 50 percent of the county's work-eligible population. This condition takes into account the differences between state and federal program requirements, and provides penalty relief based on the degree of success in meeting state participation requirement;

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- .413 County actions resulting from erroneous state written policy interpretations;
- .414 Mistakes made by state staff in the establishment of the county work participation rate; and/or
- .415 The county significantly improves its county-specific work participation rate during the state's Corrective Action period and in accordance with CDSS' corrective action plan negotiated with the DHHS. Relief will be provided as follows:
 - (a) If the state does not receive a penalty reduction for significant improvement, the county will receive a penalty reduction if there is a significant improvement defined as at least equal to or over 50 percent of the rate the county is required to meet after the state's federally-approved caseload reduction credit has been applied within the same period covered by the state's DHHS accepted corrective compliance plan.
 - (b) If the state does not receive a penalty waiver, the county will receive a penalty waiver if the county meets federal WPR requirements within the same period covered by the state's DHHS accepted corrective compliance plan.
- .42 When a CWD is granted relief from all or a portion of its share of the penalty, that portion of the total penalty shall not be imposed on the other CWDs that failed to meet the federal requirement.
- .5 CWDs that have submitted an appeal, pursuant to this section, shall be notified in writing of any amounts that have been reduced or eliminated.
- .6 CDSS will notify the CWD in writing of the outcome of its appeal.
- .7 If the county has not submitted adequate information, as determined by CDSS, to establish reason for penalty relief, then relief shall not be granted..

Authority cited: Sections 10544, 10553, and 10554, Welfare and Institutions Code. Reference: Section 10544, Welfare and Institutions Code; 45 CFR 261.52, 262.4, 262.5, and 262.7.